

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ELVA TERESA SELVESTER,

Plaintiff,

v.

ANDREW SAUL, Commissioner of Social
Security,

Defendant.

Case No. 2:20-cv-01536-GMN-EJY

ORDER

Before the Court is *pro se* Plaintiff Elva Teresa Selvester's Application for Leave to Proceed *in forma pauperis*. ECF No. 1. Plaintiff challenges the Social Security Administration's denial of Social Security Disability Insurance benefits.

I. Application to Proceed *in forma pauperis*

Plaintiff submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* is granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to 28 U.S.C. § 1915(e). A plaintiff must satisfy the following procedural requirements in order to file a complaint in a Social Security appeal before a federal district court: (1) the plaintiff must establish that she has exhausted her administrative remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within sixty days after notice of a final decision; (2) the complaint must indicate the judicial district in which the plaintiff resides; (3) the complaint must state the nature of the plaintiff's disability and when the plaintiff claims she became disabled; and, (4) the complaint must contain a plain, short, and concise statement identifying the nature of the plaintiff's disagreement with the determination made by the Social Security Administration and show that the plaintiff is entitled to relief. *Montoya v. Colvin*, Case No. 2:16-cv-00454-RFB-NJK, 2016 WL 890922, at *2 (D. Nev. Mar. 8, 2016) (internal citations omitted).

1 Liberally construed (*Hopkins v. Berryhill*, 697 F. App'x 892, 892 (9th Cir. 2017)), Plaintiff's
2 Complaint represents that she has exhausted her administrative remedies and timely commenced this
3 action after the Social Security Administration's Appeal Council denied her request for review (ECF
4 No. 1-1 at 5, 45-47). The Complaint further indicates the judicial district within which Plaintiff
5 resides (*id.* at 3), and alleges that she has not been able to work since May 4, 2016 due to
6 "[d]egenerative disc disease of the lumbar spine," "[m]igraines," "[a]nemia," "[o]besity," "[s]omatic
7 symptom disorder," "[d]epressive disorder," "[d]ependent personality disorder," and "[r]ule out
8 conversion disorder." *Id.* at 9, 11). Plaintiff's Complaint also alleges that the Commissioner
9 committed reversible error at step three of the five-step sequential evaluation process by
10 characterizing her symptoms as "simple pain" or "exhaustion," disregarding a residual functional
11 capacity report submitted by her psychologist, discounting the severity of her migraines and obesity,
12 declining to evaluate her fibromyalgia symptoms in accordance with Social Security Ruling 12-2p,
13 and translating her abilities to manage finances and to take care of her mother into a finding of
14 nondisability. *Id.* at 13, 15. Finally, Plaintiff challenges the Commissioner's step four finding
15 claiming she cannot perform the physical components of her past relevant work in part because her
16 migraines prevent her from being around noise, lighting, and other people. *Id.* at 15, 17, 42.
17 Plaintiff's Complaint shall therefore proceed against Defendant.

18 Accordingly,

19 IT IS HEREBY ORDERED that Plaintiff's Application for Leave to Proceed *in forma*
20 *pauperis* (ECF No. 1) is GRANTED.

21 IT IS FURTHER ORDERED that Plaintiff's Complaint (ECF No. 1-1) **shall** proceed against
22 Defendant.

23 IT IS FURTHER ORDERED that the Clerk of the Court **shall** detach and file Plaintiff's
24 Complaint (ECF No. 1-1).

25 IT IS FURTHER ORDERED that the Clerk of the Court **shall** serve the Commissioner of
26 the Social Security Administration by sending a copy of the Summons and Complaint by certified
27 mail to: (1) Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160
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1 Spear Street, Suite 800, San Francisco, CA 94105, and (2) the Attorney General of the United States,
2 Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530.

3 IT IS FURTHER ORDERED that the Clerk of the Court **shall** issue Summons to the United
4 States Attorney for the District of Nevada, and deliver the Summons and Complaint to the U.S.
5 Marshal for service.

6 IT IS FURTHER ORDERED that Defendant **shall** have **sixty (60) days** from the date of
7 service to file his answer or responsive pleading to Plaintiff's Complaint in this case.

8 IT IS FURTHER ORDERED that, henceforth, Plaintiff **shall** serve upon Defendant a copy
9 of every pleading, motion, or other document submitted for consideration by the Court. Plaintiff
10 shall include with the original paper submitted for filing a certificate stating the date that a true and
11 correct copy of the document was mailed to Defendant. The Court may disregard any paper received
12 by a district judge, magistrate judge, or the Clerk of the Court which fails to include a certificate of
13 service.

14 DATED THIS 27th day of August, 2020.

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17 ELAYNA J. YOUCHAK
18 UNITED STATES MAGISTRATE JUDGE
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